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Control over antitrust compliance in Russia: risk-oriented approach

On 1 March 2018 the Government of the Russian Federation by its decision No. 213 approved the criteria on the basis of which activities of legal entities and individual entrepreneurs are assigned with certain categories of risk for the purpose of state control over compliance with antitrust laws, and established three risk categories, respectively: average, moderate and low.

The decision is adopted in accordance with the Federal Law No. 294-FZ dated 26 December 2008 which provides for a risk-oriented approach in the arrangement and organisation of inspections and other control measures in relation to business entities. A risk-oriented approach implies that the forms, duration, frequency of measures to control and prevention of violation of obligatory requirements depend on a risk category or hazard class (category), to which the activity of a legal entity/individual entrepreneur and/or production facilities they use during such activity refers.

The following refer to the average risk category includes:

- retail chains with sales proceeds of over 400 million roubles;
- business entities that are deemed natural monopolies or engaged in regulated activities, with gross proceeds of over 10 billion roubles.

Scheduled inspections in respect of such entities can be conducted no more than once in three years.

The moderate risk category includes business entities with proceeds of over 10 billion roubles and engaging in the following activities:

- manufacturing and sale of medicines, medical products;
- medical services;
- communication services;
- transportation of gas, oil and petroleum products through pipelines;
- rail transportation;
- services in transport terminals, ports and airports;
- public telecommunication services and public postal services;
- production of electrical and heat energy;
- transfer of electrical and heat energy;
- water supply and water disposal using centralised systems, communal infrastructure systems;
- services on the use of inland waterway infrastructure;

- construction, reconstruction, repair of railway and road infrastructure.

Scheduled inspections in respect of such entities can be conducted no more than once in five years.

Business entities with the proceeds of over 10 billion roubles for the previous year, other business entities engaging in activities other than regulated ones and those conducted by entities of the moderate risk category shall refer to the low risk category and shall not be subject to scheduled inspections. The abolition of scheduled inspections in respect of such economic entities will reduce the administrative pressure thereon.

In the event (a) a business entity has a system of legal and organisational measures aimed at complying with the requirements of the antitrust laws (antitrust compliance system) for a period of not less than one year by the date of the decision to assign (change) the medium and moderate risk category to such an entity, and provided that (b) within 3 years as of the date of the decision, such an entity, its officials, or an individual entrepreneur was not brought to an administrative liability for antitrust law violations under the Code of the Russian Federation on Administrative Offenses, the activities of such an entity shall be referred to the moderate or low risk category, respectively.

The consolidated plan of inspections of business entities for 2018 is published on the website of the General Prosecutor's Office: <http://plan.genproc.gov.ru/plan2018/>.

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